

REMARKS

Reconsideration of the present application in view of the above amendments and following remarks is respectfully requested.

Status of the Claims

Claims 24-52 are presented. Claims 24, 36, and 44 are amended to eliminate ethers from the Markush group of oil/wax component (a). Claim 36 is also amended to include remove the weight limitations of components (1) – (4), for reasons discussed below. Support is found throughout the specification as originally filed. Claims 25, 27, 39 and 50 were previously cancelled. No new claims are added.

No new matter has been introduced.

Summary of the Invention as Claimed

One aspect of the claimed subject matter as presently amended is directed to a wax dispersion with an average particle size of 0.5 to 100 μm comprising (a) 10-75% of a wax phase with a melting point in the range of above 25 to about 50°C, comprising at least one oil or wax component selected from the group consisting of dialkyl(ene) carbonates, dicarboxylic acids, hydroxyfatty alcohols and mixtures thereof, and at least one emulsifier, and (b) a water phase (claims 24, 26 and 28-35). Important to the present argument is the elimination of dialkyl(ene) ethers as a member of the Markush group of wax/oil component (a). Another aspect of the claimed invention as currently amended is drawn to a wax dispersion comprising (a) 10-25% of a wax phase having a melting point in the range of about 35 to about 50°C and (b) 75-90% of a water phase (claims 36-38 and 40-43). Still another aspect of the claimed subject matter as presently amended is directed to a process for the production of such wax dispersions (claims 44-49). Yet another aspect of the invention as claimed is directed to a body care preparation comprising such wax dispersions (claims 51-52).

Rejections under 35 U.S.C. § 112, first paragraph

Previously presented claims 36-43 and 52 were rejected under 35 U.S.C. § 112, first paragraph, as containing matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed. The addition to base claim 36 of the limitation “based on the waxphase” was deemed to be new matter for lack of support in the specification. In response, base claim 36 has been amended to remove the percentage ranges of components (1) – (4), including the phrase “based on the waxphase”. In view of this amendment the Examiner is respectfully requested to withdraw the new matter rejection.

Rejections under 35 U.S.C. § 103(a)

Previously presented claims 24-43 and 51-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ansmann et al. (US 6,365,168; “Ansmann”) in view of Fogel (US 5,840,285). Applicants respectfully traverse the rejection.

Ansmann discloses a pearlescent cosmetic composition containing (a) 0.1 to 5%, preferably 0.5 to 2%, by weight of a **dialkyl ether** (col. 6, lines 5-6; claim 7); (b) a cationic polymer; and (c) an emulsifier selected from a specific group of nonionic, anionic and amphoteric surfactants, including their mixtures. Even though applicants do not necessarily agree with the Examiner’s characterization of Ansmann, in order to further prosecution, the claims have been amended in a manner to overcome the Examiner’s rejection. Specifically, independent claims 24, 36 and 44 have been amended remove dialkyl(ene) ethers from the Markush group of oil/wax components (a). Therefore applicants’ claims as presently amended are novel and patentably unobvious over Ansmann. The addition of Fogel does not alter this fact.

Previously presented claims 44-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ansmann in view of Fogel, further in view of Bucheler et al. (US 4,996,004; "Bucheler"). Applicants respectfully traverse the rejection.

As discussed above, the present claim amendments distinguish the claims over Ansmann, and the addition of either Fogel and/or Bucheler does nothing to change this. Therefore applicants' claims as presently amended are novel and patentably unobvious over the cited combination of references.

Conclusion

In conclusion, in view of the above claim amendments and remarks, applicants believe that all of the pending claims as amended are in better condition for either allowance, or consideration on appeal. The Examiner is respectfully requested to enter the amendment, reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

November 24, 2009

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